

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>HARRIET GOFORTH</b>	)	
Claimant	)	
VS.	)	
	)	
<b>CENTURY PERSONNEL</b>	)	Docket No. 230,461
Respondent	)	
AND	)	
	)	
<b>ULICO CASUALTY COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier appeal from a preliminary hearing Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery on December 23, 1998.

**ISSUES**

Claimant alleges she sustained a right knee injury at work on October 9, 1997, and later developed symptoms in her low back due to an antalgic gait caused by the knee condition. Following a preliminary hearing heard on December 22, 1998, the Judge ordered respondent to provide medical treatment and further authorized Dr. Michael McCoy to be claimant's treating physician.

Respondent denies claimant sustained a compensable back injury that arose out of and in the course of her employment with respondent. Specifically, respondent denies claimant has proven that her back condition is the direct and natural result of the right knee injury. Although in its brief to the Appeals Board respondent refers to an "alleged" right knee injury, at the preliminary hearing respondent admitted that the right knee injury is compensable. Thus, this appeal appears to be limited to the question of the compensability of the back condition. Respondent also contends the ALJ exceeded his jurisdiction by authorizing treatment with Dr. McCoy.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order for Medical Treatment should be modified to only award medical treatment for the right knee injury and to deny treatment for the alleged injury to the back.

**Findings of Fact**

- (1) On October 9, 1997, claimant injured her right knee at work while pushing a cart. She was sent to Lawrence Memorial Hospital by respondent that same day.
- (2) Claimant continued to receive care at Lawrence Memorial Hospital. Dr. Chris D. Fevurly released claimant from further medical treatment on October 23, 1997.
- (3) Claimant has a history of left knee problems as well as a preexisting patellar tilt of the right knee. Claimant was still under the care of Dr. McCoy for her left knee problems at the time of her work-related right knee injury.
- (4) Claimant was released with restrictions due to her preexisting conditions by Dr. Fevurly. He also opined that she had suffered no permanent impairment or residual problems as a result of the October 9, 1997 work-related accident. Claimant continued to use a knee brace and treated, periodically, with Dr. McCoy for both her left and right knee complaints. Claimant was last seen by Dr. McCoy in June of 1998. At that time she complained mostly of back pain. X-rays of the back were not obtained, however, because claimant was pregnant.
- (5) Claimant has worked with several different employers since her accident. On October 27, 1997 claimant began working for E & E Display. Her job duties involved working full time assembling parts on an assembly line operation. She was required to stand continuously for her full 8-hour shift with only three 10-minute breaks and no lunch break. Claimant states that in December of 1997 she first began to notice symptoms in her back. But when her deposition was taken on March 26, 1998, she made no mention of any back complaints.
- (6) At her deposition, claimant requested additional medical treatment for her right knee and respondent contends it provided her with a list of three physicians from which claimant selected Dr. Phillip L. Baker. When claimant was examined by Dr. Baker on or about April 28, 1998, she mentioned back as well as right knee symptoms. This was the first mention of back symptoms in any of claimant's authorized treatment records. The day before, however, claimant had reported to the St. Francis Hospital emergency room with back complaints.
- (7) Although there was some confusion about whether Dr. Baker was authorized to treat claimant or was instead just to perform an examination, Dr. Baker found no clinical abnormality in the right knee and no radiculopathy with reference to her back. As to restrictions, Dr. Baker opined that claimant should be able to work within normal limits for

her age and weight, but “if specific limits need to be identified, then a functional capacity would be in order.” He did not recommend any further treatment.

(8) Claimant received a court ordered independent medical examination by Dr. Sergio Delgado on August 27, 1998. Dr. Delgado noted claimant had a slight right leg limp. He diagnosed “patellofemoral pain, right knee, compatible with chondromalacia aggravated by work activities” and assigned her a 5 percent permanent partial impairment to the leg. Dr. Delgado found no impairment from the low back complaints. In his opinion claimant’s “low back complaints may be related to a right leg limp.” His recommendations for claimant included:

alternating sitting and standing, avoidance of climbing, squatting or kneeling and avoidance of pushing or pulling large weights. She should avoid lifting from the floor in excess of 15# repetitively and she would have no restrictions from waist to overhead level. Since she benefitted from previous surgery to the left knee, she may need to consider a lateral retinacular release and patellar shaving on the right to see if her symptoms would decrease. Once her pregnancy terminates, she may need to consider further evaluation for her back and leg complaints.

#### Conclusions of Law

Under the Workers Compensation Act, claimant has the burden of proving each and every element of her claim. The Appeals Board finds that claimant has proven her right knee injury arose out of and in the course of her employment with respondent, but has failed to prove that her low back condition is a direct and natural consequence of the right knee injury. The record shows that claimant performed work after leaving her employment with respondent that could have caused back symptoms even absent her right knee injury. Furthermore, the only medical opinion concerning the relationship of the back to the right knee injury does not establish causation to a reasonable degree of medical probability.

Claimant did not return to work for Garage Door following her right knee injury but has instead worked for other employers since her release by Dr. Fevurly on October 23, 1997. Claimant testified that she had a limp following her October 9, 1997 right knee injury that lasted about two months. But she did not seek medical treatment for her back until April 27, 1998. Furthermore, she made no mention of back problems during her March 26, 1998 deposition despite being asked to state all of her current complaints. Based upon the current record, therefore, medical treatment for the back should not be ordered paid by respondent. Respondent should, however, continue to provide all reasonable and necessary treatment for the right knee.

Respondent challenges the ALJ’s authority to order Dr. McCoy to be the treating physician, arguing that claimant should either have continued to treat with one of the physicians respondent had previously authorized to treat the knee or, in the alternative, respondent should have been allowed to submit a list of three names. The Appeals Board has previously held and continues to hold that an ALJ has the authority to authorize medical

treatment by a specific provider and a failure to allow respondent to submit a list of three names does not give rise to an issue that the Appeals Board has the jurisdiction to review on an appeal from a preliminary hearing order. See, e.g., DeHart v. Core Carrier Corporation, Docket No. 230,758 (October 1998).

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery on December 23, 1998, should be, and the same is hereby, modified to grant claimant medical treatment with Dr. McCoy for the right knee injury only.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1999.

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BOARD MEMBER

c: Frederick J. Patton II, Topeka, KS  
Joseph C. McMillan, Kansas City, MO  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director